
HOUSE BILL No. 1899

DIGEST OF INTRODUCED BILL

Citations Affected: IC 35-33-8.

Synopsis: Bail and bail procedure. Specifies that a bail bond may be written only by an insurer. Provides that if a defendant is charged with a misdemeanor and is a resident of Indiana, the court may require the defendant to execute a bail bond by depositing cash or securities in an amount not less than 10% of the bail. Provides that if a defendant is charged with a felony or is not a resident of Indiana, the court may require the defendant to: (1) execute a bond secured by real estate; or (2) execute a bail bond by depositing cash or securities in an amount not less than 25% of the bail. Requires a defendant admitted to bail to pay a \$20 fee. Requires: (1) 50% of the fees to be deposited in a county's supplemental public defender services fund; and (2) 50% of the fees to be deposited in a county's general fund and credited to a county jail improvement account. Allows a county to use money in the account only for the operation, construction, repair, remodeling, and enlarging of a county jail.

Effective: July 1, 2003.

Frizzell

January 23, 2003, read first time and referred to Committee on Courts and Criminal Code.

C
o
p
y



Introduced

First Regular Session 113th General Assembly (2003)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2002 Regular or Special Session of the General Assembly.

HOUSE BILL No. 1899

A BILL FOR AN ACT to amend the Indiana Code concerning criminal law and procedure.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 35-33-8-3.2, AS AMENDED BY P.L.1-2001,
2 SECTION 36, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2003]: Sec. 3.2. (a) A court may admit a defendant to bail and
4 impose any of the following conditions to assure the defendant's
5 appearance at any stage of the legal proceedings, or, upon a showing
6 of clear and convincing evidence that the defendant poses a risk of
7 physical danger to another person or the community, to assure the
8 public's physical safety:

9 (1) Require the defendant to:

10 (A) execute a bail bond ~~with sufficient solvent sureties;~~
11 **written by an insurer (as defined in IC 27-10-1-7);**

12 (B) deposit cash or securities in an amount equal to the bail;

13 (C) execute a bond secured by real estate in the county, where
14 thirty-three hundredths (0.33) of the true tax value less
15 encumbrances is at least equal to the amount of the bail; **or**

16 (D) post a real estate bond.

17 **The defendant must also pay the fee required by subsection**

2003

IN 1899—LS 7305/DI 69+



1 (e).

2 (2) **In the case of a defendant who is charged with a**
 3 **misdemeanor and who is a resident of Indiana**, require the
 4 defendant to execute a bail bond by depositing cash or securities
 5 with the clerk of the court in an amount not less than ten percent
 6 (10%) of the bail. If the defendant is convicted, the court may
 7 retain all or a part of the cash or securities to pay fines, costs, fees,
 8 and restitution, if ordered by the court. A portion of the deposit,
 9 not to exceed ten percent (10%) of the monetary value of the
 10 deposit or fifty dollars (\$50), whichever is the lesser amount, may
 11 be retained as an administrative fee. The clerk shall also retain
 12 from the deposit under this subdivision the following:

13 (A) Fines, costs, fees, and restitution as ordered by the court.

14 (B) Publicly paid costs of representation that shall be disposed
 15 of in accordance with subsection (b).

16 (C) In the event of the posting of a real estate bond, the bond
 17 shall be used only to insure the presence of the defendant at
 18 any stage of the legal proceedings, but shall not be foreclosed
 19 for the payment of fines, costs, fees, or restitution.

20 **The defendant must also pay the fee required by subsection**
 21 **(e). The individual posting bail for the defendant or the defendant**
 22 **admitted to bail under this subdivision must be notified by the**
 23 **sheriff, court, or clerk that the defendant's deposit may be**
 24 **forfeited under section 7 of this chapter or retained under**
 25 **subsection (b): (c).**

26 (3) **In the case of a defendant who is charged with a felony or**
 27 **who is not a resident of Indiana, require the defendant to:**

28 (A) execute a bond secured by real estate subject to
 29 subdivision (1)(C); or

30 (B) execute a bail bond by depositing cash or securities
 31 with the clerk of the court in an amount not less than
 32 twenty-five percent (25%) of the bail.

33 **If the defendant is convicted, the court may retain all or a**
 34 **part of the cash or securities to pay fines, costs, fees, and**
 35 **restitution, if ordered by the court. The defendant must also**
 36 **pay the fee required by subsection (e). The individual posting**
 37 **bail for the defendant or the defendant admitted to bail under**
 38 **this subdivision must be notified by the sheriff, court, or clerk**
 39 **that the defendant's deposit may be forfeited under section 7**
 40 **of this chapter or retained under subsection (c).**

41 (4) Impose reasonable restrictions on the activities, movements,
 42 associations, and residence of the defendant during the period of

C
O
P
Y



release.

~~(4)~~ (5) Require the defendant to refrain from any direct or indirect contact with an individual.

~~(5)~~ (6) Place the defendant under the reasonable supervision of a probation officer or other appropriate public official.

~~(6)~~ (7) Release the defendant into the care of a qualified person or organization responsible for supervising the defendant and assisting the defendant in appearing in court. The supervisor shall maintain reasonable contact with the defendant in order to assist the defendant in making arrangements to appear in court and, where appropriate, shall accompany the defendant to court. The supervisor need not be financially responsible for the defendant.

~~(7)~~ (8) Release the defendant on personal recognizance unless:

(A) the state presents evidence relevant to a risk by the defendant:

(i) of nonappearance; or

(ii) to the physical safety of the public; and

(B) the court finds by a preponderance of the evidence that the risk exists.

~~(8)~~ (9) Impose any other reasonable restrictions designed to assure the defendant's presence in court or the physical safety of another person or the community.

(b) Subsection (b)(2) and (b)(3) does not apply to a defendant who:

(1) is currently released from custody from any jurisdiction on any charge;

(2) has failed to appear in court within the preceding five (5) years; or

(3) has been convicted of a felony within the preceding five (5) years.

(c) Within thirty (30) days after disposition of the charges against the defendant, the court that admitted the defendant to bail shall order the clerk to remit the amount of the deposit remaining under subsection (a)(2) **or (a)(3)** to the defendant. The portion of the deposit that is not remitted to the defendant shall be deposited by the clerk in the supplemental public defender services fund established under IC 33-9-11.5.

~~(c)~~ **(d)** For purposes of subsection ~~(b)~~; **(c)**, "disposition" occurs when:

(1) the indictment or information is dismissed; or

(2) the defendant is acquitted or convicted of the charges.

(e) Except as provided in subsection (f), the clerk of the court

C
o
p
y



shall collect a fee of twenty dollars (\$20) for each bond or deposit under subsection (a)(1), (a)(2), and (a)(3). The clerk of the court shall semiannually remit the fees as follows:

(1) Fifty percent (50%) of the fees shall be deposited in the supplemental public defender services fund established under IC 33-9-11.5-1 in the county in which the court is located.

(2) Fifty percent (50%) of the fees shall be:

(A) deposited in the county general fund of the county in which the court is located; and

(B) credited to a separate account identified as the county jail improvement account.

A county may expend funds credited to a county jail improvement account, without appropriation, only for the operation, construction, repair, remodeling, and enlarging of a county jail.

~~(d)~~ (f) With the approval of the clerk of the court, the county sheriff may collect the bail posted under this section **and the fees required under subsection (e)**. The county sheriff shall remit:

(1) the bail to the clerk of the court by the following business day; and

(2) the fees to the clerk of the court one (1) time each month.

~~(e)~~ (g) When a court imposes a condition of bail described in subsection ~~(a)(4)~~: **(a)(5)**:

(1) the clerk of the court shall comply with IC 5-2-9; and

(2) the prosecuting attorney shall file a confidential form prescribed or approved by the division of state court administration with the clerk.

SECTION 2. IC 35-33-8-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 7. (a) If a defendant:

(1) was admitted to bail under section 3.2(a)(2) **or 3.2(a)(3)** of this chapter; and

(2) has failed to appear before the court as ordered;

the court shall issue a warrant for the defendant's arrest.

(b) In a criminal case, if the court having jurisdiction over the criminal case receives written notice of a pending civil action or unsatisfied judgment against the criminal defendant arising out of the same transaction or occurrence forming the basis of the criminal case, funds deposited with the clerk of the court under section 3.2(a)(2) **or 3.2(a)(3)** of this chapter may not be declared forfeited by the court, and the court shall order the deposited funds to be held by the clerk. If there is an entry of final judgment in favor of the plaintiff in the civil action, and if the deposit and the bond are subject to forfeiture, the criminal

C
O
P
Y



1 court shall order payment of all or any part of the deposit to the
 2 plaintiff in the action, as is necessary to satisfy the judgment. The court
 3 shall then order the remainder of the deposit, if any, and the bond
 4 forfeited.

5 (c) Any proceedings concerning the bond, or its forfeiture,
 6 judgment, or execution of judgment, shall be held in the court that
 7 admitted the defendant to bail.

8 (d) After a bond has been forfeited under subsection (b), the clerk
 9 shall mail notice of forfeiture to the defendant. In addition, unless the
 10 court finds that there was justification for the defendant's failure to
 11 appear, the court shall immediately enter judgment, without pleadings
 12 and without change of judge or change of venue, against the defendant
 13 for the amount of the bail bond, and the clerk shall record the
 14 judgment.

15 (e) If a bond is forfeited and the court has entered a judgment under
 16 subsection (d), the clerk shall transfer to the state common school fund:

17 (1) any amount remaining on deposit with the court (less the fees
 18 retained by the clerk); and

19 (2) any amount collected in satisfaction of the judgment.

20 (f) The clerk shall return a deposit, less the administrative fee, made
 21 under section 3.2(a)(2) or 3.2(a)(3) of this chapter to the defendant, if
 22 the defendant appeared at trial and the other critical stages of the legal
 23 proceedings.

24 SECTION 3. IC 35-33-8-8 IS AMENDED TO READ AS
 25 FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 8. (a) If a defendant
 26 was admitted to bail under section 3.2(a) of this chapter and the
 27 defendant has knowingly and intentionally failed to appear before the
 28 court as ordered, the court:

29 (1) shall issue a warrant for the defendant's arrest;

30 (2) may not release the defendant on personal recognizance; and

31 (3) may not set bail for the rearrest of the defendant on the
 32 warrant at an amount that is less than the greater of:

33 (A) the amount of the original bail; or

34 (B) two thousand five hundred dollars (\$2,500);

35 in the form of a bond issued by an entity defined in IC 27-10-1-7
 36 or the full amount of the bond in cash.

37 (b) In a criminal case, if the court having jurisdiction over the
 38 criminal case receives written notice of a pending civil action or
 39 unsatisfied judgment against the criminal defendant arising out of the
 40 same transaction or occurrence forming the basis of the criminal case,
 41 funds deposited with the clerk of the court under section 3.2(a)(2) or
 42 3.2(a)(3) of this chapter may not be declared forfeited by the court, and

C
O
P
Y



1 the court shall order the deposited funds to be held by the clerk. If there
2 is an entry of final judgment in favor of the plaintiff in the civil action,
3 and if the deposit is subject to forfeiture, the criminal court shall order
4 payment of all or any part of the deposit to the plaintiff in the action, as
5 is necessary to satisfy the judgment. The court shall then order the
6 remainder of the deposit, if any, forfeited.

C
o
p
y

